

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HUDSON UNITED BANK	:	CIVIL ACTION
	:	
v.	:	
	:	
BERWYN HOLDINGS, INC.	:	No. 00-4168
	:	
- - - - -		
HUDSON UNITED BANK	:	CIVIL ACTION
	:	
v.	:	
	:	
HAROLD HENDRICKSON, et al.	:	NO. 00-4169

MEMORANDUM AND ORDER

J. M. KELLY, J.

OCTOBER , 2000

Before the Court is a Motion for Reconsideration filed by the Plaintiff, Hudson United Bank ("Hudson"). Hudson asks the Court to revisit its September 14, 2000 Order, which compelled the joinder of two separate confessions of judgment pursuant to Federal Rule of Civil Procedure 19. For the following reasons, the motion is denied.

I. BACKGROUND

On March 3, 1995, Defendants Harold and Mary Hendrickson ("the Hendricksons") executed a promissory note in the amount of \$94,421.39 in favor of Hudson. That promissory note contained a clause that allowed Hudson to seek a confession of judgment if the Hendricksons defaulted on the note. On June 26, 1998, Berwyn Holdings, Inc. ("Berwyn"), in order to induce Hudson to continue dealing with the Hendricksons, guaranteed the full payment of the

note to Hudson. The guaranty and suretyship agreement between Hudson and Berwyn also contained a clause allowing Hudson to seek a confession of judgment if the Hendricksons defaulted.

After the Hendricksons defaulted on the promissory note, Hudson bank sought recourse in federal court. On August 16, 2000, Hudson filed two separate actions, one against the Hendricksons and one against Berwyn.¹ Both actions seek a confession of judgment in Hudson's favor in the amount due on the original promissory note, plus accrued interest and fees. By Order of September 14, 2000, this Court ordered the joinder of the two separate actions pursuant to Federal Rule of Civil Procedure 19. On September 25, Hudson filed this Motion for Reconsideration.

II. STANDARD OF REVIEW

Local Civil Rule 7.1(g) of the United States District Court for the Eastern District of Pennsylvania allows parties to file motions for reconsideration. E.D. Pa. R. Civ. P. 7.1(g). These motions should be granted sparingly. A court should only grant such a motion if: (1) there has been an intervening change in controlling law; (2) new evidence has become available; or (3)

¹ Hudson United Bank v. Harold Hendrickson, et al., Civ. No. 00-4169 (2000); Hudson United Bank v. Berwyn Holdings, Inc., Civ. No. 00-4168 (2000).

there is a need to correct a clear error of fact or prevent manifest injustice. General Instrument Corp. v. Nu-Tek Electronics, 3 F. Supp. 2d 602, 606 (E.D. Pa. 1998), aff'd, 197 F.3d 83 (3d Cir. 1999); Environ Products, Inc. v. Total Containment, Inc., 951 F. Supp. 57, 62 n.1 (E.D. Pa. 1996). Dissatisfaction with the Court's ruling is not a proper basis for reconsideration. Burger King Corp. v. New England Hood and Duct Cleaning Co., 2000 U.S. Dist. LEXIS 1022 (E.D. Pa. Feb. 4, 2000).

III. DISCUSSION

As there is no new evidence available in this case, and there has been no intervening change in controlling law, the Court can only grant Hudson's Motion for Reconsideration in order to correct a clear error of fact or prevent manifest injustice. Although the Court's September 14, 2000 Order requiring the joinder of Hudson's two separate actions was premised on a minor factual misunderstanding, the Court can only disturb its prior ruling if the newly apparent facts would alter the Court's legal conclusions. In other words, if the error of fact has no effect on the Court's decision, reconsideration is inappropriate. Because joining these actions is proper even under the facts as clarified by Hudson, the Court will not disturb its Order.

First, the Court acknowledges that its September 14, 2000 Order was premised on a mistake of fact. That Order stated that only one instrument of indebtedness existed. Given the pleadings

in this case, however, this mistake was not unwarranted; Hudson failed to append the Berwyn guarantee agreement to the Hendrickson Complaint, and appended the Berwyn guarantee to the Berwyn Complaint as Exhibit C while referring to it in the text of that Complaint as Exhibit B. See Plf.'s Compl. Against Berwyn Holdings, Inc. at ¶ 7. Accordingly, the Court was only aware of one instrument of indebtedness.

Hudson, in its Motion for Reconsideration, now makes it clear that two instruments of indebtedness existed: the promissory note originally signed by the Hendricksons, and the surety and guarantee agreement signed by Berwyn. Each instrument of indebtedness contained a separate and distinct promise, as well as a clause allowing Hudson to confess judgment in its favor.

Despite the Court's mistaken belief that only one instrument of indebtedness existed, however, joinder of these two claims remains appropriate. Rule 19(a) of the Federal Rules of Civil Procedure reads as follows:

A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if . . . (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may . . . (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person

be made a party.

Fed. R. Civ. P. 19(a). The language of Rule 19 is compulsory; the Court must join two actions if a risk of inconsistent obligations exists and joining the new party will not destroy the Court's jurisdiction over the matter.

In the instant case, although there were two separate instruments of indebtedness, there is only one underlying debt. Irrespective of who satisfies the debt, Hudson bank is only owed money by virtue of the original promissory note. The Hendrickson's promised to pay Hudson and Berwyn merely guaranteed that Hudson would be paid that same amount. Allowing Hudson to maintain two separate actions would allow it to conceivably collect twice on the same amount of money owed.² For example, Hudson could collect the debt from the Hendricksons and then, in a separate action maintained against Berwyn, collect the same amount. Berwyn, not a party to the action against the Hendricksons, would therefore be subject to an inconsistent obligation: paying a debt that has already been satisfied.

Hudson suggests that the potential for tort liability or legal penalties will adequately prevent it from collecting inconsistent judgments against both Berwyn and the Hendricksons

² Moreover, Hudson's counsel could collect attorney's fees twice. Each separate confession of judgment contains language allowing Hudson's counsel to collect an attorney's commission of ten percent of the unpaid principal balance and accrued interest for collection, "but in any event not less than Five Hundred Dollars" Maintaining two separate confessions of judgment could allow Hudson's counsel to collect this fee twice.

because doing so "would, at a minimum, subject Hudson to an action of conversion by the defendants" or "serious penalties and/or legal actions." Plf.'s Mot. for Recons. at 4.³ While that may be, the language of Rule 19 is compulsory, requiring the Court to join parties when appropriate. Moreover, penalties and liability for conversion would occur only after Hudson collected duplicative judgments; they would not prospectively prevent Hudson from doing so. Courts apply Rule 19 in order to obviate the need for such penalties in the first place.

That Hudson could file these confessions of judgment separately under Pennsylvania law is of no moment. See id. at 3. Rule 19 does not require joint filings; rather, it requires the joinder of cases filed separately. Thus, irrespective of whether Hudson could have filed two separate actions against the Hendricksons and Berwyn, Rule 19 nonetheless requires their joinder. Joinder is always proper when there is a risk of inconsistent obligations and doing so does not deprive the court of jurisdiction.

Hudson suggests that the Court's refusal to amend its September 14, 2000 Order will cause manifest injustice because, in a consolidated case, one Defendant's defense could preclude Hudson's collecting against both Defendants. See id. at 3-4. Hudson offers no case law in support of this proposition and also

³ Hudson's Motion for Reconsideration lacks page numbers. By the Court's count, Hudson's discussion of the propriety of filing the two actions separately can be found on the third page of its motion.

acknowledges that, at present, neither Defendant has even entered an appearance in this action. See id. at 3. Moreover, any possible prejudice to Hudson resulting from a "scrivener error" contained in Hudson's contracts is solely the fault of Hudson and does not result from the Court's joinder of these actions. See id. No manifest injustice will result from joining these two actions.

As joining the two actions brought by Hudson does not destroy the Court's jurisdiction over this matter,⁴ Rule 19 requires the Court to do so. Although the Court was admittedly mistaken about the facts in its September 14, 2000 Order, that mistake had no bearing on the Court's decision. Joining the two actions brought by Hudson is required by Rule 19 and would serve the interests of justice and judicial economy. Accordingly, Hudson's Motion for Reconsideration is denied.

⁴ Hudson is a New Jersey state chartered banking institution and a citizen of the State of New Jersey. The Jefferson Bank division of Hudson maintains its principal place of business in Pennsylvania. The Hendricksons reside in and are citizens of Delaware. Berwyn is a Delaware corporation with its principal place of business in Delaware. As complete diversity exists and the amount in controversy here exceeds \$75,000, the Court has jurisdiction pursuant to 28 U.S.C. § 1332(a).

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O R D E R

AND NOW, this day of October, 2000, in consideration
of the Motion for Reconsideration filed by the Plaintiff, Hudson
United Bank (Doc. No. 5), it is ORDERED that the Motion for
Reconsideration is DENIED.

BY THE COURT:

JAMES MCGIRR KELLY, J.